

**BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION**

In the Matter of the Commission, on	)	Application No. NG-0028/PI-97
its own motion, seeking to investigate	)	
and adopt policies for administration of	)	
Consumer Choice Programs offered by	)	
Jurisdictional Utilities for natural gas	)	
Service in Nebraska.	)	

**INITIAL COMMENTS OF AQUILA, INC. d/b/a AQUILA NETWORKS**

By its Order entered on June 14, 2005, the Nebraska Public Service Commission (“Commission”), on its own motion has opened an investigation to adopt policies for administration of Consumer Choice Programs offered by Jurisdictional Utilities for natural gas service in Nebraska.

The Commission defines a consumer choice program as a program offered by a jurisdictional utility that allows ratepayers, other than high-volume ratepayers, to purchase their natural gas supply from a person other than the jurisdictional utility. The Commission’s Order states that under such a program the Jurisdictional Utility acts merely as a transporter of natural gas in accordance with the rules and regulations of the consumer choice program.

**A. INVESTIGATION ISSUES**

The Commission’s June 14, 2005 Order set forth five separate areas to be explored by the Commission. Those areas are as follows:

1.     **Standard of Conduct.** Adoption of a standard code of conduct for jurisdictional utilities seeking to offer consumer choice programs, using Kinder Morgan, Inc.'s Code of Conduct in its Nebraska Gas Tariff, General Terms and Conditions, Item No. 38, for purposes of discussion;

2. **Educational Information.** Production of educational information by the Commission for consumers regarding consumer choice programs, such as pamphlets and website materials, using examples collected by Commission staff from other states for purposes of discussion, available for interested parties to review via Internet links on the Commission's website at [www.psc.state.ne.us](http://www.psc.state.ne.us);

3. **Annual Reporting.** Annual reporting requirements for jurisdictional utilities that offer consumer choice programs and competitive natural gas providers that participate in consumer choice programs, including, but not limited to, customer take rates for each supplier, the default rate, information on range of rates and offerings available from each supplier during a consumer choice program selection period;

4. **Historic Cost Comparisons.** Whether and how to calculate historic cost comparisons among the suppliers for the benefit of consumers and the Commission; and

5. **Auditing.** Auditing of consumer choice programs including, but not limited to, auditing costs of administration of a consumer choice program by a jurisdictional utility.

The Commission noted that this docket is not intended to explore whether the Commission ought to require all jurisdictional utilities to offer customer choice programs.

The Commission's June 14, 2005 Order requires submission of written comment from all interested parties on issues related to consumer choice programs for natural gas service in Nebraska on or before August 15, 2005.

## **B. COMMUNICATION**

Pursuant to the Commission's June 14, 2005 Order and its applicable Rules and Regulations, Aquila, Inc. d/b/a Aquila Networks ("Aquila") hereby submits the following comments.

Aquila reserves the right to supplement its comments, particularly with regard to making reply or responsive statements to any comments submitted by other parties to the investigation issues.

Correspondence or communications regarding these comments, including service of all notices and orders of the Commission, should be addressed to:

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## **C. GENERAL COMMENT**

1. **Consumer Choice Program Definition.** Aquila notes that the Act refers to "Customer Choice" and not "Consumer Choice." The Commission should clarify if it intends "Consumer Choice Program" to be something other than "Customer Choice" as described in

Neb. Rev. Stat. § 66-1851 or its ongoing proposed Rulemaking No. 157A or both.<sup>1</sup>

Notwithstanding the alternative reference, the Commission's definition of "Consumer Choice Program" appears to be limited in scope and not encompassing of other types of customer choice programs that provide customers an alternative to the regulated sales rate. While the Commission's definition includes a choice of competitive natural gas commodity suppliers, there are other types of "Consumer Choice Programs" that are permitted under the State Natural Gas Regulation Act ("Act"). For example, the Act ("Act") in Sec. 66-1851 (1) states:

“...a jurisdictional utility may file with the commission rates and one or more rate schedules and other charges, and rules and regulations pertaining thereto, that enable the utility to provide service to rate payers under customer choice and other programs offered by a utility to unbundle one or more elements of the service provided by the utility.” (*Emphasis added*)

The Act does not appear to limit “Consumer” or “Customer” Choice Programs to a program that requires that the gas be purchased from an entity other than the local gas utility.

“Consumer” or “Customer” Choice by definition should mean any approved alternative program in addition to or in place of the normal customer class jurisdictional sales rate.

Consumer or Customer Choice Programs may provide choices between competitive natural gas suppliers, choices between natural gas prices methodologies or some combination thereof. The jurisdictional utility may provide its customers choice simply by offering different natural gas purchase pricing alternatives instead of a variety of competitive commodity suppliers. To that end, it should be noted that Aquila has offered a Fixed Price Option (i.e., a customer price choice) program to the customers in Rate Area II (City of Lincoln, NE) for the last eight years. This Fixed Price Option program offers the Lincoln customers a choice between the normal

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<sup>1</sup> See also, Rule 001.01D in the Commission Rule and Regulation No. 157A, Order Proposing Fourth Set of Rules (July 19, 2005).

variable sales rate and a fixed price rate over a twelve month period. Any over or under collections in gas cost during the twelve month period is flowed through the Rate Area II Gas Cost Adjustment (GCA) mechanism.

Aquila has previously offered its residential customers in Rate Areas I and III, a Fixed Price Option (i.e., customer price choice) program that included no adjustment at the end of the period for any over or under collections in gas cost. Twenty-six Aquila communities had participated in that program. Aquila no longer offers that program. Both of the above programs offered Aquila's customers a "choice."

Finally, Aquila has also considered offering a Customer Choice Program on its system. Aquila reviewed several alternative customer choice programs. Out of those different models considered by Aquila, only one of the "Customer Choice Programs considered by Aquila allowed competitive suppliers other than the jurisdictional utility to serve as gas providers to its participating customers. Aquila has not concluded its review nor made other final decisions regarding a choice program.

As for the Commission's "Consumer Choice Program" definition, Aquila would urge the Commission to expand its investigation and definition of "Consumer Choice Program" to include other types of Choice Programs. Otherwise, the Commission should further clarify that it is only seeking to address in this investigation consumer choice of "Competitive Natural Gas Commodity Suppliers" programs.

#### **D. SPECIFIC COMMENT ON ISSUES**

1. **Adoption of a Standard Code of Conduct for Jurisdictional Utilities.** Aquila does not object to a Kinder Morgan style code of conduct. However, Aquila does maintain that

along with other prerequisites, those standards should not be limited to jurisdictional utilities.<sup>2</sup> Instead, Aquila supports a Standard Code of Conduct for all participants in a Customer Choice Program. At a minimum, the code of conduct should apply where the participant is also a utility (i.e., jurisdictional or non-jurisdictional) or affiliated with a utility. That is, any entity (e.g. Municipal, Jurisdictional Utility, Natural Gas Public Utility Provider, Power District, Metropolitan Utility District, Public Utility District, or Political Subdivision) participating in a Customer Choice Program who either (a) is a natural gas utility, or (b) affiliated with a natural gas utility (jurisdiction or otherwise) should have a Customer Choice Program of its own, and must be subject to a code of conduct comparable to the one applied to the Jurisdictional utility offering the Customer Choice Program. To permit competitive suppliers who are either a utility or connected with utilities to participate in a Consumer Choice program without restriction could lead to unfair business practices, undue discriminatory pricing, subsidized service, or other improper activity detrimental to other choice participants and to the customers of the jurisdictional utility. The requirements and consequences for violation of the code of conduct should be spelled out, so that each participant understands what is at stake and the consequences of willful and knowing violations.

**Item #38; Kinder Morgan’s Supplier Code of Conduct the Customer Guidelines**

Aquila suggest that a letter “G” be added requiring a participating supplier to inform its customers of their rights to contact the jurisdictional utility and /or the Public Service Commission with any unresolved complaints.

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<sup>2</sup> One prerequisite to participation in a “Consumer Choice Program” is that the participant must be approved as a Competitive Natural Gas Provider (“CNGP”) and possess valid CNGP approval from the Commission.

2. **Production of Educational Information on the Commission's website at [www.psc.state.ne.us](http://www.psc.state.ne.us)** Aquila notes that it could not review the internet links of the educational information referenced in the Commission's June 14, 2005 Order. Aquila does believe that the educational component of any customer choice program is an important key to successful program implementation. Aquila estimates the annual initial cost of educating Aquila's customers in Nebraska would to be in excess of \$200,000. The cost should drop over a five year period, as customers become more familiar with the Choice Programs. The initial and subsequent costs of all Choice Program education should be borne by all CNGP participants and customers. The educational cost should be surcharged as incurred on an annual basis or deferred and included as uncontested cost in a latter rate case.

3. **Annual Reporting.** Annual reporting seems reasonable to Aquila so long as it is neither (a) too time consuming nor (b) requires Aquila to disclose competitive sensitive information. To be clear, Aquila supports an annual reporting requirement for jurisdictional utilities that offer consumer choice programs, but believes that such reporting requirements should be confidential and used only by the Commission to gather statistical information. Any attempts by competitive suppliers to pursue an advantage from the information provided must be prohibited by the Commission. The information should not be used to give one supplier an advantage over another supplier.

4. **Historic Cost Comparison.** Aquila questions the relevant value of this requirement. Aquila would not be opposed to a historic reporting requirement if there is a simple way to show cost trending by year or to give customers a reference point. Aquila does not want to be placed in a position of rendering advice or predicting future prices based on historic

reporting requirements. Aquila will need additional clarification of this requirement before it can comment further.

5. **Auditing of Consumer Choice Programs.** If a jurisdictional utility only offers a customer choice program, and does not offer regular sales services, an audit/review of the consumer choice program may only be necessary during a formal rate case. If the jurisdictional utility offers both a regular sales service and a choice program, then a review of the initial choice program may be necessary prior to a rate case to ensure cost are being properly separated. After a utility has been in for a formal rate case an interim audit between rate cases should not be necessary. Financial information similar to that obtained in an audit/review could be included in the annual reporting requirements mentioned above thus removing a formal audit requirement.

#### **E. CONCLUSION**

Aquila appreciates the opportunity to provide comments in this investigation. For the reasons stated above, Aquila requests Commission approval to continue to participate in this investigation and all that it entails.

Dated this 15th day of August, 2005.

Respectfully submitted,

**AQUILA, INC. d/b/a AQUILA NETWORKS**

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